

E-299, 132/SA-89-368DENYING PETITIONS FOR RECONSIDERATION AND
ACKNOWLEDGING AGREEMENT OF PARTIES

PROCEDURAL HISTORY

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Barbara Beerhalter
Cynthia A. Kitlinski
Norma McKanna
Robert J. O'Keefe
Darrel L. Peterson

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of a Petition by the City of Rochester, Minnesota, to Provide Interim Service to Annexed and Newly Platted Areas Known as Cimarron Ninth and Hunter Hills Subdivisions Within the City of Rochester

ISSUE DATE: October 9, 1989

DOCKET NO. E-299, 132/SA-89-368

In the Matter of a Petition by the City of Rochester, Minnesota, to Provide Interim Service to an Annexed and Newly Platted Area Known as Willow Hills Third Subdivision Within the City of Rochester

Docket No. E-299, 132/SA-89-420

In the Matter of a Petition by the City of Rochester, Minnesota, to Provide Interim Service to an Annexed and Newly Platted Area Known as Parkwood Hills Fifth Subdivision Within the City of Rochester

Docket No. E-299, 132/SA-89-421

In the Matter of a Petition by the City of Rochester, Minnesota, to Provide Interim Service to an Annexed and Newly Platted Area Known as Lincolnshire Second Subdivision Within the City of Rochester

Docket No. E-299, 132/SA-89-423

In the Matter of a Petition by the City of Rochester, Minnesota, to Provide Interim Service to an Annexed and Newly Platted Area Known as Cimarron Tenth Subdivision Within the City of Rochester

Docket No. E-299, 132/SA-89-457

ORDER DENYING PETITIONS FOR
RECONSIDERATION AND
ACKNOWLEDGING AGREEMENT OF
PARTIES

PROCEDURAL HISTORY

On September 1, 1989, the Minnesota Public Utilities Commission (the Commission) issued its ORDER DENYING INTERIM SERVICE RIGHTS TO THE CITY OF ROCHESTER in each of the above-captioned matters. On September 19, 1989, the City of Rochester (Rochester or the City) filed a Petition for Rehearing in each of these matters.

The City asked the Commission to amend or clarify its September 1, 1989 Order to state that when the City is permitted to serve these areas, People's Cooperative Power Association, Inc. (People's) will not be compensated for the cost of installation and removal of any temporary distribution facilities. Further, the City asked that the Order state that People's will remove at no cost to the City any transformers installed in these areas which cannot be used by the City.

On September 29, 1989, People's filed its Answer to the City's Petition. People's asked the Commission to deny the Petition for Rehearing. People's offered four grounds for denial:

1. The relief requested pertains to a determination of compensation, an issue not before the Commission in this Petition;
2. The particular form of compensation involved pertains to costs of reintegration, an element of compensation statutorily required under the terms of Minn. Stat. § 216B.44 (1988);
3. The denial of such compensation would be an unconstitutional taking without just compensation; and
4. These matters are more properly considered and determined in a contested case proceeding involving the overall compensation question in which all material issues of disputed fact will be determined.

The Department of Public Service (DPS or the Department) filed its comments on September 29, 1989.

The DPS stated that its comments in these proceedings contained the following statement based on responses from People's:

The Department also believes that no unnecessary duplication of facilities will result from People's extension of facilities. People's has pledged that it will remove its transformers, together with any unneeded lines and poles, and return them to inventory if Rochester elects to acquire the service areas in question. Thus, no duplication of facilities will result.

The DPS stated that this consideration was important to the Department's recommendation throughout these interim proceedings. The DPS also said that some of the cost of removing transformers may be compensable to the extent it is a cost of integrating facilities pursuant to Minn.

Stat. § 216B.44 (1988). The DPS said this issue would be resolved in any future compensation hearing. The DPS concluded by supporting the City's Petitions, but recommended that the Commission's September 1, 1989 Order be clarified as follows:

People's will not receive compensation for either the temporary facilities or the unneeded transformers used to provide interim service in a development.

The Commission considered this matter on October 3, 1989.

FINDINGS AND CONCLUSIONS

The Commission must decide whether to reconsider its September 1 Orders in these matters.

The Commission affirms its September 1, 1989 Order in each of these cases. The Commission finds that the City has raised no new issues, offered no new evidence, and identified no issues which require further Commission consideration of its decisions to deny the City interim service rights in these areas. The Commission concludes that its September 1, 1989 Orders are lawful and reasonable. The Commission will, therefore, deny the City's Petitions for Rehearing in these matters.

The Commission will, however, acknowledge the existence of an agreement among the parties addressing temporary facilities installed by People's to provide interim service in these areas. This agreement is evidenced by the files and records of these proceedings, including the oral and written commitments made during deliberations by People's. The Department has stated that it relied on this understanding in making its recommendations in this case. The Commission finds that the parties agree that People's should not be compensated for temporary, interim facilities installed or the cost of installing those facilities to service the areas involved here. These temporary, interim facilities are defined by the parties as:

underground facilities and lines and poles strung from People's pre-existing distribution system for the sole purpose of extending interim electric service to facilities installed in the subdivisions in question, and transformers used to serve the subdivisions in question.

The Commission agrees with the DPS that the City may have to pay People's some of the cost of removing the interim facilities to the degree those costs are interpreted to be costs of integrating facilities pursuant to Minn. Stat. § 216B.44 (1988). The Commission believes that the cost of removing interim facilities will be addressed in a future compensation hearing. In the Matter of the Application of the City of Rochester to Adjust Its Service Area Boundary with People's Cooperative Power Association, Inc., Docket No. E-132, 299/SA-88-996.

ORDER

1. The City of Rochester's Petitions for Rehearing in these matters are denied.
2. The Commission hereby acknowledges an agreement among the parties addressing compensation for interim, temporary facilities as discussed above.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Mary Ellen Hennen
Executive Secretary

(S E A L)